

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

CHRISTIANA TRUST,

Plaintiff(s),

V.

SFR INVESTMENTS POOL 1, LLC,

Defendant(s).

Case No.: 2:16-cv-01603-JAD-NJK

ORDER

16 “Calendars are simply too crowded for parties to treat scheduling orders as optional and to
17 submit required court filings at their own convenience.” *Martin Family Trust v. Heco/Nostalgia*
18 *Enterps. Co.*, 186 F.R.D. 601, 603 (E.D. Cal. 1999) (internal quotations and citation omitted)
19 (imposing sanctions on attorney for failing to file status report by ordered deadline). Pending
20 before the Court is the second order to show cause issued in this case arising out of violation of an
21 order setting a deadline. Docket No. 24.¹

22 | I. STANDARDS

23 "Orders are not suggestions or recommendations, they are directives with which
24 compliance is mandatory." *Gfeller v. Doyne Med. Clinic, Inc.*, Case No. 2:14-cv-01940-JCM-

¹ The case has since been dismissed on stipulation of the parties. Docket No. 27. The fact that a case has been dismissed does not impact a court's ability to rule on an earlier-issued order to show cause as "[i]t is well established that a federal court may consider collateral issues after an action is no longer pending." *Cooter & Gell v. Hartmax Corp.*, 496 U.S. 384, 395 (1990); see also *Burrage-Simon v. State Farm Mut. Auto. Ins. Co.*, 2015 WL 5224885, at *3 (D. Nev. Sept. 8, 2015) (same for sanctions imposed under Rule 16(f) of the Federal Rules of Civil Procedure).

1 VCF, 2015 WL 5210392, at *8 (D. Nev. Sept. 3, 2015) (citing *Chapman v. Pacific Tel. & Tel. Co.*,
2 613 F.2d 193, 197 (9th Cir. 1979) and *Weddell v. Stewart*, 261 P.3d 1080, 1085 & n.9 (Nev. 2011)).
3 Litigants have an “unflagging duty to comply with clearly communicated case-management
4 orders.” *Martin Family Trust*, 186 F.R.D. at 604.

5 There are several sources of legal authority by which federal courts enforce their orders.
6 Most pertinent here, Rule 16(f) of the Federal Rules of Civil Procedure requires compliance with
7 any “scheduling or other pretrial order.” Fed. R. Civ. P. 16(f)(1)(c).² Rule 16(f) is “broadly
8 remedial and its purpose is to encourage forceful judicial management.” *Sherman v. United States*,
9 801 F.2d 1133, 1135 (9th Cir. 1986) (*per curiam*).

10 Rule 16(f) applies regardless of whether the non-compliance with the court order was
11 intentional. *See, e.g., Lucas Auto. Eng’g, Inc. v. Bridgestone/Firestone, Inc.*, 275 F.3d 762, 769
12 (9th Cir. 2001). Similarly, “[i]t is firmly established that sanctions may be imposed for a party’s
13 unexcused failure to comply with a Rule 16 order, even if that failure was not made in bad faith.”
14 *Hologram USA, Inc. v. Pulse Evolution Corporation*, Case No. 2:14-cv-0772-GMN-NJK, 2016
15 WL 2757377, at *2 (D. Nev. May 11, 2016) (collecting cases).

16 Courts “prefer not to spend time lecturing and cajoling violators into compliance through
17 the imposition of sanctions.” *Dela Rosa v. Scottsdale Mem’l Health Sys., Inc.*, 136 F.3d 1241,
18 1244 (9th Cir. 1988). Nonetheless, violations of orders setting deadlines “involve a matter most
19 critical to the court itself: management of its docket and the avoidance of unnecessary delays in
20 the administration of its cases.” *Martin Family Trust*, 186 F.R.D. at 603 (quoting *Matter of*
21 *Sanction of Baker*, 744 F.2d 1440, 1441 (10th Cir. 1984) (*en banc*) (internal quotations omitted)).
22 “Part of the purpose of the sanctioning power—the power at issue here—is to control litigation and
23 preserve the integrity of the judicial process.” *Nick v. Morgan’s Foods, Inc.*, 270 F.3d 590, 594
24 (8th Cir. 2001). Judges have a responsibility to enforce the directives laid down for the case:

25 Rules are rules—and the parties must play by them. In the final
26 analysis, the judicial process depends heavily on the judge’s
credibility. To ensure such credibility, a [magistrate] judge must

27 _____
28 ² A minute order constitutes an “order” for purposes of Rule 16(f). *E.g., Gfeller*, 2015 WL
5210392, at *8.

1 often be firm in managing crowded dockets and demanding
2 adherence to announced deadlines. If he or she sets a reasonable
due date, parties should not be allowed casually to flout it or
p painlessly escape the foreseeable consequences of noncompliance.

3 *Legault v. Zambarano*, 105 F.3d 24, 28-29 (1st Cir. 1997) (citation omitted). “The court fully
4 understands the pressures of practicing law; however, the court cannot allow attorneys to flout
5 deadlines and escape the foreseeable consequences of doing so.” *Rice v. Barnes*, 201 F.R.D. 549,
6 551 (M.D. Ala. 2001). As the Ninth Circuit has emphasized, a court order setting deadlines “is
7 not a frivolous piece of paper, idly entered, which can be cavalierly disregarded by counsel without
8 peril Disregard of the order would undermine the court’s ability to control its docket . . . and
9 reward the indolent and the cavalier.” *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 610
10 (9th Cir. 1992) (internal quotations and citations omitted).

11 When a court determines that Rule 16(f) has been triggered, it has broad discretion in
12 fashioning an appropriate sanction. *See, e.g., Official Airline Guides, Inc. v. Goss*, 6 F.3d 1385,
13 1397 (9th Cir. 1993); *see also* Local Rule IA 11-8 (the Court may impose “any and all appropriate
14 sanctions on an attorney” who violates any order). Violations of orders are “neither technical nor
15 trivial,” *Martin Family Trust*, 186 F.R.D. at 603, and can have severe ramifications. Rule 16(f)
16 itself provides that courts may issue “any just orders,” including those authorized by Rule
17 37(b)(2)(A)(ii)-(vii), which include the initiation of contempt proceedings and entry of case-
18 dispositive sanctions. *See* Fed. R. Civ. P. 16(f)(1); *see also* *Malone v. U.S. Postal Serv.*, 833 F.2d
19 128, 130-33 (9th Cir. 1987) (affirming dismissal sanction). While not expressly enumerated, the
20 imposition of court fines is within the scope of the “just orders” permitted by Rule 16(f). *See, e.g.,*
21 *Nick*, 270 F.3d at 595-96. Alternative sanctions for counsel to be better prepared to practice in the
22 court, such as the requirement to attend continuing legal education courses, is also within the scope
23 of the “just orders” permitted by Rule 16(f). *See Cabrera v. New Albertson’s, Inc.*, 2013 U.S. Dist.
24 Lexis 101497, at *7 n.5 (D. Nev. July 19, 2013); *see also* *Alternative Sanctions in Litigation*, 47
25 N.M. L. Rev. 209, 218 (2017) (“Rule 16(f) permits courts to impose alternative sanctions on
26 lawyers, and they freely do so using the rule as authority”). In determining the appropriate
27 sanction, a primary objective is to deter similar misconduct. *See, e.g., Martin Family Trust*, 186
28 F.R.D. at 604.

1 **II. ANALYSIS**

2 This case was filed more than three years ago. *See* Docket No. 1. Given the lengthy stay
3 of this case, the docket reflects only two primary Court-ordered deadlines for the entirety of the
4 case. Counsel violated both. First, on May 14, 2019, United States District Judge Jennifer A.
5 Dorsey ordered the parties to file a proposed discovery plan and proposed scheduling order by
6 June 28, 2019. Docket No. 15. Despite being provided ample time to comply, the parties violated
7 that order by not filing a proposed discovery plan, which resulted in the issuance of an order to
8 show cause. Docket No. 19. The parties responded to that order to show cause by indicating that
9 they had violated the earlier order because they were engaged in settlement talks and had since
10 settled the case. *See* Docket No. 21. The Court declined to impose monetary sanctions given the
11 circumstances, but admonished the parties and their counsel for violating an order. Docket No.
12 22. The Court further warned that it “expects strict compliance with all of its orders and deadlines
13 set therein moving forward.” *Id.* (emphasis in original).

14 That warning proved completely ineffective. A few days later, on July 10, 2019, the
15 undersigned ordered the parties to file dismissal papers by September 9, 2019. Docket No. 23.
16 The Court instructed that, “[g]iven the age of this case, the Court is not inclined to extend this
17 deadline.” *Id.* (emphasis in original). Despite the preceding admonition and being provided ample
18 time to comply, the parties and their attorneys again violated a court-ordered deadline by not filing
19 dismissal papers by that date, which resulted in the issuance of the now-pending second order to
20 show cause. Docket No. 24.

21 As a threshold matter, the Court was very specific that “Plaintiff, Defendant, Aaron
22 Lancaster, Dana Nitz, Jake Spencer, Jacqueline Gilbert, Karen Hanks, Diana Ebron, and Howard
23 Kim” were required to respond to the second order to show cause. *Id.*³ Despite that crystal clear
24 order, attorneys of record Dana Nitz, Jake Spencer, and Howard Kim each failed to file a response.⁴

25 _____
26 ³ Each of these attorneys received electronic notice of the order to show cause through the
CM/ECF system. *See* Docket No. 24 (notice of electronic filing). Each of these attorneys is listed
as counsel of record on the docket.

27 ⁴ This shortcoming is particularly egregious for Mr. Nitz, who was previously sanctioned
28 for similar misconduct of violating court-ordered deadlines and failing to respond to the resulting
order to show cause. *See U.S. Bank N.A. v. SFR Investments Pool I, LLC*, 2018 WL 701816, at

1 Given that these attorneys have provided no justification of any kind for their actions and, in doing
2 so, have violated the second order to show cause itself, the imposition of monetary sanctions is
3 appropriate in addition to the alternative sanction identified below. Given those circumstances,
4 Jake Spencer and Howard Kim must pay a Court fine of \$100 each. Given those circumstances,
5 as well as the previous imposition of sanctions and issuance of a warning, *U.S. Bank*, 2018 WL
6 701816, at *5-6, Dana Nitz must pay a Court fine of \$300. These fines are personal to each
7 attorney. Payment of these fines shall be made to the “Clerk, U.S. District Court” by noon on
8 October 21, 2019, and a notice of compliance must be filed by each of these attorneys by that date.

9 With respect to the parties and the remaining attorneys, they filed a joint response that once
10 again indicates nonchalantly that they should not be sanctioned because they have been working
11 on finalizing settlement. Docket No. 26 at 2. This response trivializes the importance of the
12 Court’s orders and fails to recognize that the Court’s management of its docket is an issue of
13 critical importance. *E.g., Martin Family Trust*, 186 F.R.D. at 603. As a policy matter, the Court
14 encourages informal resolutions of litigation, *Ahem v. Central Pac. Freight Lines*, 846 F.2d 47, 48
15 (9th Cir. 1988), but a settlement is not a talisman enabling disregard of clear orders. The Court is
16 well aware that the parties have settled this case and were working on finalizing the same, as that
17 is precisely what prompted the issuance of the order to file dismissal papers by September 9, 2019.
18 Docket No. 23. No reasonable justification has been advanced for failing to comply with that
19 order or failing to seek an extension from the Court. See *U.S. Bank*, 2018 WL 701816, at *4 (“If
20 a deadline cannot be met, the proper course is most assuredly not to simply ignore an order”).⁵

21
22 *5-6 (D. Nev. Feb. 2, 2018) (imposing fine of \$100 plus requiring Mr. Nitz to pay one quarter of
23 the costs and attorneys’ fees incurred by the opposing party). The Court further “caution[ed] . . .
24 **Mr. Nitz . . . that it expects strict compliance with all Court orders and all applicable rules
25 moving forward, and that failure to comply may result in significant sanctions.**” *Id.* at *6
26 (emphasis in original). When previous sanctions prove unsuccessful in deterring similar
27 misconduct in the future, the natural consequence is that the sanctions are escalated. See, e.g.,
28 *Garcia v. Geico Cas. Co.*, 2015 U.S. Dist. Lexis 2155, at *8-10 (D. Nev. Jan. 6, 2015) (quintupling
previous sanctions imposed in another case for repetition of similar misconduct).

29
30 ⁵ The joint response evidences a fundamental misunderstanding in asserting that counsel
31 “apologize for not notifying the Court regarding the status of the settlement and filing dismissal
32 papers.” Docket No. 26 at 2. The Court issued an order imposing a deadline. If counsel were
33 unable to meet that deadline, they needed to do more than simply “notify” the Court; they needed
34 to file a request for an extension and obtain relief from the Court. See Local Rule 7-1(b).

1 Because no legitimate reason has been advanced for violating the Court's order setting the
2 subject deadline, attorneys Aaron Lancaster, Mr. Nitz, Mr. Spencer, Jacqueline Gilbert, Karen
3 Hanks, Diana Ebron, and Mr. Kim must each attend four hours of continuing legal education
4 regarding federal practice and procedure within the next six months. The continuing legal
5 education must meet the following criteria: (1) it must be approved by the state CLE authorities,
6 (2) it must be in a live classroom setting, and (3) it must not be counted toward, and will be in
7 excess of, these attorneys' CLE requirements for the Nevada Bar or any other state bar to which
8 these attorneys belong. *Cf. Petrish v. JP Morgan Chase*, 789 F Supp. 2d 437, 456 (S.D.N.Y.
9 2011). No later than April 13, 2020, each of these attorneys must file a separate declaration
10 attesting to the completion of the required courses and attaching copies of the certificates of
11 attendance for each course.

12 **THE COURT EXPECTS STRICT COMPLIANCE WITH ITS ORDERS IN THE**
13 **FUTURE. FAILURE TO COMPLY WITH THIS ORDER WILL RESULT IN THE**
14 **IMPOSITION OF ADDITIONAL SANCTIONS AND/OR THE INITIATION OF**
15 **CONTEMPT PROCEEDINGS.**

16 **III. CONCLUSION**

17 The second order to show cause is hereby **RESOLVED** as outlined above. Monetary and
18 alternative sanctions are **IMPOSED** on counsel as identified above and, in all other respects, the
19 second order to show cause is **DISCHARGED**.

20 IT IS SO ORDERED.

21 Dated: October 7, 2019

22 
23 Nancy J. Koppe
24 United States Magistrate Judge
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